

EXHIBIT 10

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION

CATHERINE ALEXANDER,

Plaintiff,

vs.

No. 3:18-cv-966-MJR-DGW

TAKE-TWO INTERACTIVE SOFTWARE, INC.,
2K GAMES, INC.; 2K SPORTS, INC.; WORLD
WRESTLING ENTERTAINMENT, INC.;
VISUAL CONCEPTS ENTERTAINMENT;
YUKE'S CO., LTD.; AND YUKE'S LA, INC.,

Defendants.

VIDEOTAPED DEPOSITION OF JOSE ZAGAL

August 1, 2019; 8:02 a.m.

St. Louis, Missouri

Reported by:

Kelli Ann Willis

Job no: 25723

1 Q. Would you agree -- let me try that again.
2 Would you agree that WWE 2K is a realistic
3 depiction of WWE wrestling?

4 A. I would say yes.

5 Q. Would you say that WWE 2K includes the
6 elements that you have discussed with regard to the
7 core elements of WWE wrestling?

8 A. I would say yes.

9 Q. WWE 2K includes the stadium, right?

10 A. Uh-huh.

11 Q. And the arenas?

12 A. Yes, many of them.

13 Q. And the wrestling rings?

14 A. Yes, many of them. I don't know if all.

15 Q. WWE 2K includes professional wrestlers,
16 right?

17 A. Yes.

18 Q. It includes actually over 200 of them,
19 right?

20 A. Different titles will have different
21 numbers of wrestlers, and the number of wrestlers in
22 the game also varies on things such as content
23 provided afterwards.

24 If you were to say does it include a lot
25 of wrestlers, I would say yes.

1 Q. It includes for whenever it's published
2 the current roster as a bottom line, and then
3 additional wrestlers on top of that?

4 A. I would say it includes a lot of
5 wrestlers, because they often include wrestlers
6 from -- that are not in the current roster.

7 Q. Right. But they do include the current
8 roster, plus additional wrestlers, right?

9 A. I couldn't state that for sure.

10 Q. You're not sure?

11 A. I'm not sure for a given year what the
12 current roster is and whether all of those show up
13 in the game. I'm not sure about that.

14 Q. And the fact there are so many wrestlers
15 is one of the selling points of the game, right?

16 A. Yes.

17 Q. It shows that players can play a variety
18 of characters, true?

19 A. Yes.

20 Q. And the professional wrestlers that appear
21 in WWE 2K are depicted how they appear in real life,
22 right?

23 A. Yes.

24 Q. And is it your understanding that the
25 professional wrestlers depicted in WWE 2K were

1 created by photographing the wrestlers?

2 A. So I refer to, in my report, from the
3 materials I received, it seems that that was the
4 case, yes.

5 Q. And that WWE 2K replicates the
6 professional wrestlers' physical features, right?

7 A. Copies, yes.

8 Q. And WWE 2K replicates their faces, right?

9 A. Yes. It copies them, yes.

10 Q. And WWE 2K replicates their body types,
11 right?

12 A. Copies them, yes.

13 Q. And WWE 2K wrestlers are true to life,
14 right?

15 A. Broadly speaking, yes.

16 Q. WWE 2K also replicates referees, right?

17 A. Yes. Well, I'm not an expert in the WWE
18 wrestling. I don't know.

19 Q. Is it your understanding that the coaches
20 in WWE 2K are based on real-world coaches?

21 A. I would assume so.

22 Q. Is it your understanding that the arenas
23 in WWE 2K are based on real-world arenas?

24 A. I would assume so.

25 Q. And WWE 2K includes music, right?

1 A. Yes.

2 Q. It includes announcers?

3 A. Yes.

4 Q. The announcers provide in-game commentary,
5 right?

6 A. Uh-huh, yes.

7 Q. And the real wrestling matches, there are
8 announcers that provide commentary, true?

9 A. Yes.

10 Q. WWE 2K has wrestling-related sounds,
11 right?

12 A. Yes.

13 Q. And the sounds in WWE 2K replicate
14 real-world sounds from WWE wrestling matches, true?

15 A. Yes. I don't know if all of them.

16 Q. But it sounds -- WWE 2K sounds like a WWE
17 wrestling match does?

18 A. I would expect so, yes.

19 Q. You know because you played and watched,
20 played the game and watched WWE, right?

21 A. Yes.

22 Q. In WWE 2K, you hear cheering crowds?

23 A. Yes, sometimes.

24 Q. Sometimes booing crowds?

25 A. Yes, yes.

1 Q. And the crowd responses are similar to
2 those you would hear in a real WWE wrestling match,
3 right?

4 A. Yes.

5 Q. There are buzzers in WWE 2K?

6 A. I believe so.

7 Q. And the same buzzers you would hear in a
8 WWE wrestling match, right?

9 A. I would assume.

10 Q. And there are announcements in WWE 2K?

11 A. You mean separate from announcers or --

12 Q. There are announcements. The announcers
13 are making announcements, I guess is the right way?

14 A. Yes, I would expect announcers to make
15 announcements.

16 Q. Similar to announcements you hear in WWE
17 wrestling, right?

18 A. I would expect them to, yes.

19 Q. And when you play WWE 2K, you play as a
20 wrestler, right?

21 A. When I play personally?

22 Q. Yes. Or when one plays?

23 A. Usually I would say yes.

24 Q. Is there a way to play WWE 2K as something
25 other than a wrestler?

1 Q. Sure.

2 A. Yes.

3 Q. Have you looked at them in real life?

4 A. No.

5 Q. You know that the tattoos were created as
6 custom tattoos, right?

7 A. I'm not familiar with the specifics of how
8 the tattoos were created.

9 Q. You know they were inked on Randy Orton,
10 right?

11 A. Yes.

12 Q. And you're not aware of someone else who
13 has those tattoos?

14 A. I'm not aware of other people having the
15 same tattoos as Randy Orton has.

16 Q. Mr. Orton is a professional wrestler,
17 right?

18 A. That is my understanding.

19 Q. And his tattoos are an expression of his
20 identity, correct?

21 MR. FRIEDMAN: Object to form.

22 THE WITNESS: They are part of his
23 identity, yes.

24 BY MR. SIMMONS:

25 Q. They express his identity, don't they?

1 A. I would say broadly speaking, yes.

2 Q. And they are part of his personal
3 expression, true?

4 MR. FRIEDMAN: Objection, calls for
5 speculation.

6 THE WITNESS: Broadly speaking, yes.

7 BY MR. SIMMONS:

8 Q. And professional wrestlers do their
9 wrestling in public, right?

10 A. Well, what do you mean by "public"?

11 Q. Not that -- in a way that members of the
12 public can see.

13 A. Yes.

14 Q. And you would agree with me that
15 Ms. Alexander knew that Mr. Orton would appear in
16 public when the tattoos were inked, right?

17 A. I have no idea what relationship
18 Ms. Alexander had with Randy Orton, if she knew who
19 he was or not; I don't know.

20 Q. You haven't spoken to her about it?

21 A. I have not spoken to her.

22 Q. Did you review her transcript in this
23 case?

24 A. Ah, no.

25 Q. Is your testimony in this case based on

1 on a specific study that was done. If someone
2 else were to have my same knowledge and
3 experience and they read the same things as me,
4 would they have the same opinion? That's what

5 I --

6 BY MR. SIMMONS:

7 Q. Just for the record, that is no, right?
8 Would they have the same opinion? No, not
9 necessarily?

10 A. I don't know.

11 Q. Because there isn't something that was
12 done that could be redone again, right?

13 MR. FRIEDMAN: Objection, form. Asked and
14 answered.

15 THE WITNESS: I would say no, because we
16 don't have the methods to be able to answer
17 that question at the moment.

18 BY MR. SIMMONS:

19 Q. Okay. You believe that the Defendants in
20 this case expected that use of tattoos on Mr. Orton
21 in the WWE 2K games at issue in this case would
22 drive sales and increase profits to some extent,
23 right?

24 A. I believe that they expected that the
25 inclusion of Randy Orton in the games the way he

1 looks in real life would drive sales, yes, to a
2 certain degree or extent.

3 Q. But you don't reach the issue of whether
4 the use of the tattoos was part of that, right?

5 A. I believe if the tattoos were wrong, that
6 would -- I believe in my report, I state that if his
7 tattoos were wrong, as in not the way they look on
8 Randy Orton, the person, then that would have a
9 negative effect on sales.

10 Q. But your -- just to be clear, your
11 opinions don't extend to whether the tattoos alone,
12 leaving aside this overarching verisimilitudinous
13 question, drives sales or increases profits in the
14 games at issue in this case, right?

15 A. You're asking if I comment on that in my
16 report?

17 Q. I'm asking if you reached an opinion on
18 it.

19 A. In the sense that the tattoos are part of
20 Randy Orton's character, I think they matter.

21 Q. But leaving aside the verisimilitudinous
22 issue of their being the same as what exists in the
23 real world, you didn't reach a conclusion about the
24 tattoos as works of art and whether they drive sales
25 or lead to profits of the games at issue in this

1 case, right?

2 A. I don't believe I commented in my report
3 on whether or not tattoos specifically, only by
4 themselves, devoid of any context, drives sales.

5 Q. You believe that video game fans and
6 prospective buyers of WWE 2K games care about
7 Mr. Orton's appearance in the games at issue, right?

8 A. Broadly speaking, yes.

9 Q. What is your basis for that opinion?

10 A. Again, my broad knowledge of the industry,
11 and specifically, in the report, I think I provide
12 some examples of fans caring about Mr. Orton's
13 appearance in the game specifically.

14 Q. So other than the examples cited in your
15 report, you didn't conduct a larger study, right?

16 A. No, I did not conduct a large-scale study.

17 Q. And do you remember that the number of
18 instances discussed in your report is about less
19 than 10?

20 A. I would have to look at the report to
21 answer that specifically.

22 Q. But it is not -- it is not a high volume,
23 right?

24 A. What do you mean by "high"?

25 Q. Well, you understand that to draw